

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANE D JENKINS
Claimant

CENTRAL IOWA KFC INC
Employer

APPEAL 22A-UI-01069-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.1A(37) – Total, partial unemployment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

On November 15, 2021, Shane Jenkins (claimant/appellant) filed an appeal from the decision dated January 12, 2021 (reference 02) that denied unemployment insurance benefits as of April 5, 2020 based on a finding claimant was still employed for the same hours and wages.

A telephone hearing was held on February 3, 2022. The parties were properly notified of the hearing. Claimant participated personally. Central Iowa KFC Inc (employer/respondent) participated by Area Coach Marshall Brandt.

Employer's Exhibits 1-6 were admitted. Claimant's Exhibit A was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant totally, partially, or temporarily unemployed?
- III. Is the claimant able to and available for work?
- IV. Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer in April 2019. He was hired as a part-time customer service team member. There is no guarantee of hours in this position. Claimant filed a claim for benefits from the benefit week ending April 11, 2020 and continuing through the benefit week ending

August 15, 2020. Claimant remained employed with employer in the same part-time position during those weeks. Claimant reported wages in each week filed.

Claimant argues he was working fewer hours in the weeks he filed for benefits than in prior weeks. Documents submitted by employer and wage records do not support this contention. Of note, the Department's wage records show claimant earned from employer \$2,073.00 in the fourth quarter of 2019 and \$1,999.00 in the first quarter of 2020. He earned \$2,257.00 in the second quarter of 2020 and \$2,514.00 in the third quarter of 2020, the quarters in which he was filing for benefits. In other words, claimant actually earned more during the period he was filing for benefits than in the period preceding it. Claimant was also limiting his availability for work during the weeks filed due to personal obligations and transportation issues.

The Unemployment Insurance Decision was mailed to claimant at the address 1348 E EUCLID AVE #239 DES MOINES IA 50316-1218 on January 12, 2021. That was claimant's correct address at that time. Claimant did not receive the decision due to issues with his mail and moving shortly thereafter. He was unaware there was an issue until he received overpayment decisions in November 2021. He appealed at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated January 12, 2021 (reference 02) that denied unemployment insurance benefits as of April 5, 2020 based on a finding claimant was still employed for the same hours and wages is **AFFIRMED**.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b)
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service."

The record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The administrative law judge finds claimant was still employed in his part-time job at the same hours and wages as contemplated in the contract of hire and is therefore not partially unemployed in the weeks filed. Benefits are denied.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated January 12, 2021 (reference 02) that denied unemployment insurance benefits as of April 5, 2020 based on a finding claimant was still employed for the same hours and wages is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
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February 22, 2022
Decision Dated and Mailed

abd/abd